IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1569 of 2001
in
SPECIAL CIVIL APPLICATION No 7793 of 2000
with
CIVIL APPLICATION No 12883 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BABUBHAI BHAGWANJI MEHTA
Versus
STATE OF GUJARAT SPECIAL SECRETARY (APPEALS)

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Appearance:
1. LETTERS PATENT APPEAL No. 1569 of 2001
MR SUNIL C PATEL for Appellant No.
GOVERNMENT PLEADER for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellants-original petitioners are husband and sons of late Smt.Shantaben Babulal Mehta. She purchased land bearing survey no.18 of village-Umargam, Dist. Valsad from one Vithal Kambali on 23rd February, 1956. Mutation Entry No.1411 was effected on 28th April, 1956. However, concerned authority made an endorsement that the said land was fragment and the sale having made in contravention of the provisions of Bombay Prevention of Fragmentation and Consolidation Act, 1948 (for short "the Act"), therefore, the said mutation entry was required to be cancelled and accordingly it was cancelled on 7th August, 1957. This was done behind the back of Shantaben without giving any opportunity of hearing to her. Shantaben died in 1976 without the knowledge that mutation entry regarding the land in question purchased by her was cancelled by the authority on 7th August, 1957. Because of this her legal heirs and representatives i.e. her husband and her sons were also in know of the fact that the mutation entry was cancelled by the authority in 1957, till 1991.

#. It is the case of the appellants-petitioners that as soon as they came to know about the cancellation of mutation entry in 1957, they immediately filed RTS Appeal No.100/91 before the Deputy Collector challenging the order dated 7th August, 1957 passed by the authority cancelling mutation entry regarding the land in question. However, the said appeal was dismissed by the Deputy Collector, on the technical ground like limitation as he was of the opinion that there was a gross delay in filing the appeal against the order of cancelling the mutation entry without going into the merits of the case. This was challenged by the appellants-petitioners in revision being RTS Revision No.113 of 1993 before the Collector. However, the learned Collector, by his order dated 20th January, 1994 dismissed the said revision on the ground of limitation. Hence, further revision application was filed under rule 108(6)(a) of the Gujarat Land Revenue Rules, 1972 before the State Government. The same was also dismissed on 2.3.2000 by Principal Secretary, Revenue Department (Appeals), State of Gujarat.

#. The aforesaid orders passed by the Deputy Collector, Collector, Government have been challenged by the

appellants-petitioners before this court by way of Special Civil Application No.7793 of 2000. After hearing both the learned counsel, Mr.Patel for the appellant-petitioners and learned AGP for respondents, the learned Single Judge of this court (Coram : Miss.R.M.Doshit, J.) by order dated 26.6.2001 dismissed the writ petition on the ground that to condone the delay is a matter of discretion and in absence of sufficient cause is shown, the authority was right in dismissing the appeals and revisions filed by the appellants-petitioners on the ground of delay as the same was not sufficiently explained. Learned Single Judge has also observed in her order that though Shantaben passed away in 1976, the appellants-petitioners do not apply for mutation for nearly 15 years after the death of Shantaben and for the first time i.e. in the year 1995 they filed an appeal. Thus, writ petition was dismissed by the learned Single Judge on the ground of limitation and the ad-interim relief granted earlier on the writ petition came to be vacated. Hence, this appeal.

#. Learned counsel Mr.Sunil Patel for appellants-petitioners vehemently submitted that all the authorities below and the learned Single Judge have committed grave error in throwing out the case on the ground of delay. He submitted that admittedly, the mutation entry was cancelled by the concerned authority on 7th August, 1957 behind the back of deceased-Shantaben. She was not given any opportunity before cancelling the mutation entry by the concerned authority. This had never come to the notice of Shantaben till she died in 1976. So as the case with the appellants-petitioners, who are husband and sons of Shantaben. They, for the first time, came to know about the cancellation of mutation entry in 1991 only i.e. after a period of almost 34 years. As soon as they came to know about the same they filed appeal and challenged the order of authority cancelling the mutation entry passed in 7th August, 1957. Unfortunately, all the authorities below, including the learned Single Judge of this court committed grave error in throwing out their case on the ground of delay. In fact, there was no delay in approaching the authority. Period of limitation would start only from the date of knowledge and the fact mentioned by the appellants-petitioners in their appeal filed before the Deputy Collector was never controverted. In that view of the matter, authorities were absolutely wrong in dismissing their case on the ground of gross delay and latches. Similarly, mistake was committed by the learned Single Judge while dismissing the writ petition.

#. Alternatively, Mr.Patel submitted that even if there was delay it was properly explained by the appellants-petitioners, therefore, the authorities below ought not to have thrown out their case on the ground of delay. He submitted that even the authorities in their orders have clearly observed that the order of cancellation of mutation entry was passed behind the back of deceased-Shantaben. Thus, the impugned order of cancellation of mutation entry was passed by the order in clear violation of principles of natural justice, therefore, the order ought to have been quashed and set aside by the authority. In support of his submission, Mr.Patel has placed reliance on the judgment of the Hon'ble Supreme Court in case of Collector, Land Acquisition, Anantnag v. Mst.Katiji reported in AIR 1987 SC 1353 wherein the Hon'ble Supreme Court held that "Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties." The Hon'ble Supreme Court further observed in Mst.Katiji's case (supra) that "judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

On facts of that case the Hon'ble Supreme Court held that "making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner." However, learned AGP, Mr.Sood, initially, vehemently submitted that the authority passed the order of cancelling mutation entry way back on August 7, 1957 and till the existence of deceased-Shantaben, she had never challenged the same up to 1976 i.e. for a period of almost 20 years. Even thereafter, her legal heirs-present appellants-original petitioners have also not bothered to find out about the said order being passed and for the first time they have approached the appellate authority i.e. Deputy Collector by way of appeal No.100 of 1991 only. Thus, there was a further delay of 14 years on the part of the legal heirs of the deceased-Shantaben. In that view of the matter, when the authorities below dismissed their case on the ground of

delay, then this court should not interfere with such orders, more particularly, when learned Single Judge of this court refused to exercise her extraordinary jurisdiction under Article 226 of the Constitution of India. Alternatively, Mr.Sood submitted that delay of 34 years remained totally unexplained by the appellants-petitioners in challenging the order of cancelling the mutation entry before the appellate authority, therefore, this court should not interfere with the orders passed by the authorities, which were not interfered by the learned Single Judge in writ jurisdiction.

#. Having heard the learned counsel for the parties we are of the opinion that period of limitation would start only from the date of the knowledge. On facts of this case, it is clear that without affording any opportunity of hearing to deceased-Shantaben the authorities straightaway cancelled the mutation entry by its order dated August 7, 1957. There is nothing on record to show that the said order of cancellation was ever communicated to deceased-Shantaben. In that view of the matter, there is no reason for us not to accept the version of the appellants-petitioners that neither the deceased-Shantaben came to know about cancellation of mutation entry till she died in 1976 nor the appellants came to know about the order of cancellation of mutation entry passed in 1957. It is only in 1991 when the appellants came to know about the said order passed on August 7, 1957 then without wasting time they immediately approached the appellate authority i.e. the Deputy Collector. Thus, in this case there was no delay on their part, therefore, all the authorities as well as the learned Single Judge committed grave error in throwing out their case on the ground of delay.

#. Having considered the rival submissions made by the learned counsel for the parties, we are of the considered opinion that the appellants-petitioners have got a meritorious case, which was wrongly through out by the authorities on the ground of delay.

#. In view of the above discussion, this appeal is allowed and the judgement and order dated 26.6.2001 dismissing the Special Civil Application No.7793 of 2000 on the ground of delay and latches is hereby quashed and set aside and the writ petition i.e. Special Civil Application No.7793 of 2000 is accepted and the impugned orders passed by the Deputy Collector, Valsad dismissing the appeal on 24.5.1993 (Annexure-B to the petition), order passed by the Collector, dismissing revision on 20.1.1994 (Annexure-C to the petition) and the impugned

order dated 2.3.2000 passed by the Principal Secretary dismissing the revision (Annexure-D to the petition) are hereby quashed and set aside. Accordingly, RTS appeal No.100 of 1991 filed by the appellants-petitioners against the order dated 7.8.1957 of cancelling the mutation entry is remanded to the court of Deputy Collector, Valsad with a direction to decide the same on merits and strictly in accordance with law after extending opportunity of hearing to all parties concerned, including the appellants-petitioners. Appeal is allowed accordingly, however, there shall be no order as to costs.

Civil Application for stay is disposed of as the main appeal itself is allowed.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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